

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

OCT 03 2014

OFFICE OF
MANAGING DIRECTOR

Scott Robertson, President
Nevada County Broadcasting, Inc.
1255 E Main Street, Suite A
Grass Valley, CA 95945

John F. Garziglia, Esquire
Womble Carlyle Sandridge & Rice, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036

Licensee/Applicant: **Nevada County
Broadcasters, Inc.**

Waiver Request: Late Payment Penalty

Disposition: Denied (47 U.S.C. § 159(d); 47 C.F.R.
§§ 1.1164, 1.1166(c))

Stations: KNCO, KUBA, KNCO-FM, K238AV and
K289BN

FRN: 0001534825

Fee: Fiscal Year (FY) 2010 Regulatory Fee Late
Payment Penalty

Date Request Filed: Sep. 28, 2010 (rec'd Jun. 24,
2014)¹

Date Regulatory Fees Paid: Nov. 12, 2010

Date Penalties Paid: Jul. 8, 2014

Fee Control No.: RROG-13-00015634

Dear Mr. Robertson and Mr. Garziglia:

This responds to Licensee's *Request*² for waiver of the penalties for late payment of Fiscal Year (FY) 2010 regulatory fees. As we discuss below, because Licensee failed to establish the existence of bank error or to present legal grounds or clear mitigating circumstances to waive collection of the penalty, we deny the *Request*.

¹ Licensee improperly submitted its *Request* with an incomplete payment to the Commission's lockbox bank. The matter was not submitted to the Commission offices until Jun. 24, 2014.

² Letter from Scott Robertson, President, Nevada County Broadcasters, Inc., 1255 E Main St., Ste. A, Grass Valley, CA 95945 to FCC, FCC Regulatory Fees, Room 1-A720, Washington, DC 20554 (Sep. 28, 2010) (*Request*). (*Request* was sent with the Nov. 10, 2010, incomplete regulatory fee payment to US Bank and not forwarded to the Office of the Managing Director until Jun. 24, 2014.). Email from John F. Garziglia, Esq., (jgarziglia@wcsr.com), Womble Carlyle Sandridge & Rice, LLP, on behalf of Nevada County Broadcasters, Inc., to ARINQUIRIES (arinquiries@fcc.gov) (Jun. 23, 2014) (*follow-up status inquiry*).

On September 28, 2010, Licensee submitted to the Commission's lockbox bank a *Request* that the Commission "waive the late penalty because ... our general manager left our operations for another market [and did not pay the fee]. We [paid] our fees ... for fifteen years without being late. We are a small market radio station and the penalty will have a negative impact on ... operations."³ Payment was late, and it did not include the accrued statutory penalty. The Commission's records show that payment for the fees was posted on November 12, 2010,⁴ and the penalties⁵ remained unpaid until July 8, 2014.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,⁶ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁷ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁸

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2010, the deadline for paying regulatory fees was August 31, 2010.⁹ Thereafter, because the fees were delinquent, under 47 U.S.C. § 159(c), the statutory 25% penalty applied. On November 12, 2010, Licensee's partial payment was posted. Licensee remained a delinquent debtor until July 8, 2014, when it paid the penalty amounts.

Licensee acknowledges it was late in paying the fees; however, Licensee asks that we waive the penalties because a key employee departed, the Licensee paid the fees on time for 15 years, and the penalties will have a negative affect on station operations.¹⁰ Licensee failed to properly file the *Request*. Because Licensee was delinquent in paying the fee at the time it submitted its *Request*, the *Request* was dismissible,¹¹ and because it was filed with the Commission's lockbox (within an incomplete payment) it was not filed with the Office of the Secretary.¹² We considered the matter after Licensee paid the penalty.

³ *Request*. Licensee failed to provide any evidence supporting the asserted "negative impact."

⁴ *Id.* Licensee dated its check "9/28/2010." Available records show that the FCC Form 159 was received at US Bank on October 4, 2010. Even so, the check was not negotiated and payment made until November 12, 2010. Licensee provided a copy of what appears to be a page from Licensee's bank account statement reporting approximately 49 checks paid during the period November 1 through 30, 2010. Checks with sequence numbers lower than the number on the check written to pay the fees were processed before and after the payment date of this check.

⁶ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁶ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁷ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

⁸ 47 C.F.R. § 1.1164.

⁹ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

¹⁰ *Request*.

¹¹ 47 C.F.R. §§ 1.1164(e), 1.1166(c).

¹² See 47 C.F.R. §§ 0.401(b)(1), 1.1166(c).

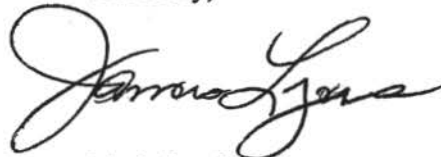
When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

Repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."¹³

Licensee's assertions do not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



For: Mark Stephens
Chief Financial Officer

¹³ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).